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**TITLE 326 AIR POLLUTION CONTROL DIVISION**

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**FIRST NOTICE OF COMMENT PERIOD**

LSA Document #17-395

**ELECTRONIC NOTICE FOR AIR PERMITS****PURPOSE OF NOTICE**

The Indiana Department of Environmental Management (IDEM) is soliciting public comment on amendments to rules at [326 IAC 2-1.1-6](#), [326 IAC 2-7-13](#), [326 IAC 2-7-17](#), [326 IAC 2-8-13](#), [326 IAC 2-8-18](#), [326 IAC 2-12-1](#), and [326 IAC 2-13-1](#) concerning legal notice provisions for permits issued under the New Source Review (NSR) and Title V permit programs. IDEM seeks comment on the affected citations listed and any other provisions of Title 326 that may be affected by this rulemaking.

**CITATIONS AFFECTED:** [326 IAC 2-1.1-6](#); [326 IAC 2-7-13](#); [326 IAC 2-7-17](#); [326 IAC 2-8-13](#); [326 IAC 2-8-18](#); [326 IAC 2-12-1](#); [326 IAC 2-13-1](#).

**AUTHORITY:** [IC 13-14-8](#); [IC 13-17-3-1](#); [IC 13-17-3-4](#).

**SUBJECT MATTER AND BASIC PURPOSE OF RULEMAKING****Basic Purpose and Background**

Over the years, the availability of and access to the Internet and other forms of electronic media has increased significantly in the United States. One effect of this development is that circulation of newspapers and other print media has declined. Historically, IDEM has relied on local newspapers to provide public notice for permit and other agency actions. However, as the publishing industry continues to adapt to changes in media formats, smaller newspapers are going out of business while others are being bought by larger corporations, making printed newspaper advertisements less effective in providing widespread public notice of permit actions. Recently, ten Indiana newspapers were bought by an out-of-state company, which has led to hurdles and delays regarding the publication of some permit actions. In some cases, publications have been delayed as long as two weeks, which causes further delays with agency permit issuance and can negatively impact local companies and businesses.

On October 18, 2016, the United States Environmental Protection Agency (U.S. EPA) published a final rule in the Federal Register (81 FR 71613) that became effective on November 17, 2016, revising the public notice provisions for the NSR and Title V permit programs. The final rule removed the mandatory requirement to provide public notice of certain draft air permits through publication in a newspaper. Instead, the final rule requires the publication of an electronic notice (e-notice) for draft permits and actions issued by U.S. EPA or by permitting authorities implementing U.S. EPA's federal permitting rules.

For draft permits that are issued by permitting authorities with their own U.S. EPA-approved program that meets the requirements of 40 CFR part 51 or 70, including Indiana, the rule allows the option of adopting either e-notice or newspaper publication as the primary method of public notice. The final rule states that whichever method the permitting authority chooses to adopt must be indicated to the public as the consistent noticing method used, and must provide reasonable access to other materials that support the permit decision. The final rule does not prevent permitting authorities from supplementing e-notice with newspaper notice or additional means of notification to the public when deemed necessary.

E-notice is becoming a much more convenient, cost-effective, and expedient method of communicating important agency notices and actions than newspaper publications. E-notice is already being practiced by many permitting authorities, and several of IDEM's program areas already use e-notice to publish public notices on the agency webpage that can be found at <http://www.in.gov/idem/5474.htm>. Additionally, IDEM's air permitting program has a searchable online database for the public to use that links directly to the public notices and is found at <http://www.in.gov/ai/appfiles/idem-caats/>. IDEM anticipates that converting to e-notice as the primary method of public notice will enable permitting authorities to communicate permitting and other affected actions to the public more quickly and efficiently. E-notice will also provide cost savings as compared to newspaper publications. While IDEM has already been successful in reducing the costs of legal advertising for the state by shortening the length of legal ads published in local newspapers, eliminating these advertisements altogether would reduce costs even further. Additionally, IDEM anticipates that e-notices will expand public access to permit-related documents, because more people are using the Internet as a primary means of information gathering and news updates than ever before. Therefore, IDEM is proposing to revise its rules to be consistent with the federal rule revisions.

IDEM seeks comment on the affected citations listed, including suggestions for specific language, any other provisions of Title 326 that may be affected by this rulemaking, and alternative ways to achieve the purpose of the rulemaking.

### **Alternatives to Be Considered Within the Rulemaking**

Alternative 1. Modify the current rule language to adopt the federal public notice provisions for draft air permits to allow IDEM to publish certain permit notices for comment electronically.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, this alternative is comparable to federal regulation found at 81 FR 71613.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

Alternative 2. Do not revise permitting notice provisions.

- Is this alternative an incorporation of federal standards, either by reference or full text incorporation? No.
- Is this alternative imposed by federal law or is there a comparable federal law? Yes, this alternative is comparable to prior federal regulation amended by 81 FR 71613.
- If it is a federal requirement, is it different from federal law? Not applicable.
- If it is different, describe the differences. Not applicable.

### **Applicable Federal Law**

This rulemaking addresses the U.S. EPA final rule published in the Federal Register on October 18, 2016 (81 FR 71613) that revises the public notice provisions for NSR and Title V permit programs to require e-notice for U.S. EPA and permitting authority actions. IDEM is proposing to revise its rules to be consistent with the federal rule revisions.

### **Potential Fiscal Impact**

Potential Fiscal Impact of Alternative 1. This alternative will provide significant cost savings for the agency. IDEM'S Office of Air Quality (OAQ) has already reduced the amount of money spent on legal advertising over the past three years, while still meeting all legal requirements. Legal advertising expenditures for the previous five fiscal years (FY) are as follows:

- FY 2012: \$44,395
- FY 2013: \$45,484
- FY 2014: \$37,531
- FY 2015: \$17,784
- FY 2016: \$16,290

This alternative will have a significant fiscal impact, allowing the agency to save approximately \$17,000 per year. This amount is based on the average amount of money that was spent during FY 2015 and FY 2016 from the OAQ Title V fund. Additionally, this alternative would reduce the administrative burden on agency staff.

Potential Fiscal Impact of Alternative 2. This alternative would have minimal fiscal impact. Costs for newspaper ads would remain the same amount that the agency is currently spending, which is approximately \$17,000 per year.

### **Small Business Assistance Information**

IDEM established a compliance and technical assistance program (CTAP) under [IC 13-28-3](#). The program provides assistance to small businesses and information regarding compliance with environmental regulations. In accordance with [IC 13-28-3](#) and [IC 13-28-5](#), there is a small business assistance program ombudsman to provide a point of contact for small businesses affected by environmental regulations. Information on the CTAP and other resources available can be found at:

[www.in.gov/idem/ctap](http://www.in.gov/idem/ctap)

For purposes of [IC 4-22-2-28.1](#), small businesses affected by this rulemaking may contact the Small Business Regulatory Coordinator:

Angela Taylor  
IDEM Small Business Regulatory Coordinator/CTAP Small Business Liaison  
IGCN 1316  
100 North Senate Avenue  
Indianapolis, IN 46204-2251  
(317) 233-0572 or (800) 988-7901  
[ctap@idem.in.gov](mailto:ctap@idem.in.gov)

For purposes of [IC 4-22-2-28.1](#), the Small Business Ombudsman designated by [IC 5-28-17-6](#) is:

Katelyn Colclazier  
Small Business Ombudsman  
Indiana Economic Development Corporation  
One North Capitol, Suite 700  
Indianapolis, IN 46204  
(317) 431-1560  
[kcolclazier@iedc.in.gov](mailto:kcolclazier@iedc.in.gov)

Resources available to regulated entities through the small business ombudsman include the ombudsman's duties stated in [IC 5-28-17-6](#), specifically [IC 5-28-17-6\(9\)](#), investigating and attempting to resolve any matter

regarding compliance by a small business with a law, rule, or policy administered by a state agency, either as a party to a proceeding or as a mediator.

The Small Business Assistance Program Ombudsman is:

Brian Rockensuess

IDEM Small Business Assistance Program Ombudsman/Office of Government and Community Affairs

IGCN 1301

100 North Senate Avenue

Indianapolis, IN 46204-2251

(317) 234-3386 or (800) 451-6027

brockens@idem.in.gov

### Public Participation and Work Group Information

At this time, no work group is planned for the rulemaking. If you feel that a work group or other informal discussion on the rule is appropriate, please contact Keelyn Walsh, Rules Development Branch, Office of Legal Counsel at (317) 232-8229 or (800) 451-6027 (in Indiana).

### REQUEST FOR PUBLIC COMMENTS

At this time, IDEM solicits the following:

(1) The submission of alternative ways to achieve the purpose of the rule.

(2) The submission of suggestions for the development of draft rule language.

Comments may be submitted in one of the following ways:

(1) By mail or common carrier to the following address:

LSA Document #17-395 Electronic Notice for Air Permits

Keelyn Walsh

Rules Development Branch

Office of Legal Counsel

Indiana Department of Environmental Management

Indiana Government Center North

100 North Senate Avenue

Indianapolis, IN 46204-2251

(2) By facsimile to (317) 233-5970. Please confirm the timely receipt of faxed comments by calling the Rules Development Branch at (317) 232-8922.

(3) By electronic mail to [kwalsh@idem.in.gov](mailto:kwalsh@idem.in.gov). To confirm timely delivery of submitted comments, please request a document receipt when sending the electronic mail. **PLEASE NOTE: Electronic mail comments will NOT be considered part of the official written comment period unless they are sent to the address indicated in this notice.**

(4) Hand delivered to the receptionist on duty at the thirteenth floor reception desk, Office of Legal Counsel, Indiana Government Center North, 100 North Senate Avenue, Indianapolis, Indiana.

Regardless of the delivery method used, in order to properly identify each comment with the rulemaking action it is intended to address, each comment document must clearly specify the LSA document number of the rulemaking.

### COMMENT PERIOD DEADLINE

All comments must be postmarked, faxed, or time stamped not later than October 6, 2017. Hand-delivered comments must be delivered to the appropriate office by 4:45 p.m. on the above-listed deadline date.

Additional information regarding this action may be obtained from Keelyn Walsh, Rules Development Branch, Office of Legal Counsel (317) 232-8229 or (800) 451-6027 (in Indiana).

Christine Pedersen, Chief  
Rules Development Section  
Office of Legal Counsel

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